

# WAIVER REQUEST – EXPEDITED ACTION REQUESTED

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement of	)	RM-11358
Copper Loops by Incumbent Local Exchange	)	
Carriers	)	
	)	
ACS of Anchorage, LLC Request for Waiver	)	
of Section 51.332 of the Commission’s Rules	)	

**Request of ACS of Anchorage, LLC for Waiver  
of Section 51.332 of the Commission’s Rules**

ACS of Anchorage, LLC, (“ACS of Anchorage”) hereby requests an expedited waiver of Section 51.332 of the Commission’s rules, 47 C.F.R. § 51.332, to permit a “retirement of copper,” as defined in Section 51.332(a), upon fewer than the 180 days’ notice otherwise required by Section 51.332(f). ACS of Anchorage recently received notice from the Alaska Department of Transportation & Public Facilities (“AK-DOT”) indicating that it will proceed with two major road work projects this summer in Anchorage that will result in the destruction of ACS of Anchorage’s copper loop plant in the vicinity, starting on or about July 1, 2016. In order to maintain its service to the affected customers, ACS of Anchorage plans to replace the affected facilities with two new digital loop carrier systems, which will use remote terminals to connect new fiber feeder from the central office to the remaining portion of the copper loops reaching customer premises.

Because this work will result in an involuntary “retirement of copper” that will take place fewer than 180 days in the future, and ACS of Anchorage has no ability to delay the AK-DOT projects, ACS of Anchorage requests a waiver of the Section 51.332 waiting period.

### **Background**

The AK-DOT has announced two major road improvements that will result in the destruction of ACS of Anchorage's copper loop plant in the surrounding area, as shown in **Exhibit A**, attached hereto. The first will take place in the vicinity of 10949 Old Seward Highway (the "Old Seward Project"), to replace existing copper loop cables that will be destroyed by the AK-DOT during work that will take place between Dimond Boulevard and O'Malley Road along the New Seward Highway. The work will affect approximately 296 ACS of Anchorage local exchange customer lines, and up to 28 General Communication, Inc. ("GCI") local exchange customer lines served via UNE loops purchased from ACS of Anchorage.

ACS of Anchorage has been unable to identify any reasonable way to maintain service to the affected customers on 100 percent copper loops for the entire 180-day notice period. On April 22, 2016, AK-DOT informed ACS of Anchorage that it had accelerated its schedule for this work, and that ACS of Anchorage will be required to transfer its customers to replacement facilities by May 20, 2016, at which time the AK-DOT will destroy the existing copper loop plant in the area in the course of its road work. While ACS of Anchorage will be able to use temporary copper loop facilities for about 6-8 weeks thereafter, it will need to transfer its customers to the new DLC by July 31, 2016, at which time, the AK-DOT work will also destroy those temporary facilities, resulting in an involuntary "retirement of copper."<sup>1</sup>

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<sup>1</sup> Because the new DLC will not be operational by May 20, 2016, ACS of Anchorage plans to transfer its customers to different temporary copper loop cables before that date. ACS of Anchorage has coordinated closely with other providers in the area, especially GCI, which serves some customers via unbundled network element ("UNE") loops that are affected by the AK-DOT work. Nevertheless, ACS of Anchorage has determined that, in this case, the mere substitution of one length of copper loop plant cable for another will not require a separate formal network change notice because the work will have no anticipated impact on any other

The second project involves the construction of a traffic roundabout in Anchorage at the current intersection of Johns Road and Klatt Road (the "Johns/Klatt Project"), approximately one mile by road southwest of the Old Seward Project site, with work also scheduled to commence and be completed this summer. This work will also result in the destruction of ACS of Anchorage's copper loop plant in the area, from Dimond Boulevard to Klatt Road along the New Seward Highway. The work will affect approximately 208 ACS of Anchorage local exchange customer lines, and up to 21 additional GCI local exchange customer lines served via UNE loops purchased from ACS of Anchorage. As in the case of the Old Seward project, ACS of Anchorage has been directed to re-route its services over new facilities to be installed in an area that will be unaffected by the work. In order to comply, ACS of Anchorage will install a second fiber-fed digital loop carrier system.

While ACS of Anchorage has not yet received formal notice from AK-DOT of the start date for the Johns/Klatt Project, ACS of Anchorage does not expect that it will be possible to comply with the 180-day notice period required by Section 51.332 for this project either. The work will be completed this summer, likely before the mid-August start of the school year for the Anchorage School District. Oceanview Elementary School on Johns Road is in a location directly impacted by the work, and both Johns Road and Klatt Road are used as elementary,

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carrier or customer. The placing into service of the temporary replacement copper loop cables is not expected to affect a competing service provider's performance or ability to provide service; affect the incumbent LEC's interoperability with other service providers; affect the manner in which customer premises equipment is attached to the interstate network; or itself result in the retirement of copper. *See* 47 C.F.R. § 51.325(a). Following the AK-DOT's completion of the first phase of the Old Seward Project (expected to be no later than July 31, 2016), ACS of Anchorage will transfer its customers from the temporary copper cable to the new DLC, and the temporary copper cable itself will be destroyed immediately thereafter, as the AK-DOT completes the remainder of the Old Seward Project.

middle school, and high school bus routes. In any event, the work will need to be completed before the end of the summer construction season, generally acknowledged to be roughly at the end of October. In addition to ACS of Anchorage and GCI, the work will affect Anchorage Water and Wastewater Utility, Chugach Electric Association, Inc., and ENSTAR Natural Gas Company. As in the case of the Old Seward Project, therefore, ACS of Anchorage will have no ability unilaterally to determine the timing of the work.

These road work projects present an opportunity for ACS of Anchorage to replace legacy copper loop plant with a new fiber-fed digital loop carrier system ("DLC") in each area that will shorten customer loops. Following completion of the work, loop lengths for customers served by the new DLCs will not exceed 5,400 feet, compared to many that reach 12,000-18,000 feet today.

The Commission's rule does not require notice to retail customers because the work will not "result in the retirement of copper loops to the premises."<sup>2</sup> Rather, the work will only shorten the existing copper loops, and ACS of Anchorage will continue to serve those remaining shorter copper loops using the new fiber-fed DLC.

Therefore, the only ACS of Anchorage customer directly affected by these projects is GCI. ACS of Anchorage has worked closely with GCI to ensure that the transition process will proceed smoothly with no loss of service to GCI or any of its customers. As a result of these efforts, GCI has indicated that it does not object to the retirement of the affected copper loop facilities required in connection with these AK-DOT projects. Working together, ACS of

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<sup>2</sup> 47 C.F.R. § 51.332(b)(3).

Anchorage and GCI will be able to ensure continuity of service to all GCI customers that currently utilize UNE loops in the affected area throughout the transition.

Concurrently herewith, ACS of Anchorage is filing the notice to the Commission required by Section 51.332(b)(1) of the Commission's rules, also attached as **Exhibit B**.<sup>3</sup> In addition, in accordance with the requirements of Section 51.332(b) and 51.332(c), ACS of Anchorage has sent notice of the proposed retirement of copper to GCI;<sup>4</sup> the Governor of Alaska; the Regulatory Commission of Alaska ("RCA"); Cook Inlet Region, Inc. ("CIRI"); and the Secretary of Defense.<sup>5</sup> Certification of ACS of Anchorage's compliance with the requirements of Section 51.332 other than the 180-day notice period, is attached as **Exhibit C**.

### **Discussion**

The Commission may waive its rules for "good cause shown."<sup>6</sup> More specifically, the Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> In making this analysis, the Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup> This request meets that standard.

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<sup>3</sup> 47 C.F.R. § 51.331(b)(1).

<sup>4</sup> 47 C.F.R. § 51.332(b)(2).

<sup>5</sup> 47 C.F.R. § 51.332(b)(4).

<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

<sup>8</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

Special circumstances support a grant of this waiver. This retirement of copper is necessitated by major road work to be undertaken by the AK-DOT, and ACS of Anchorage has no ability to dictate the timing of the project or prevent the destruction of its copper loop plant located in the area.<sup>9</sup> ACS of Anchorage only received definitive notice from the AK-DOT late in April 2016 of the final construction plans and project timing for the Old Seward Project, and has not yet received definitive notice of the exact timing of the Johns/Klatt Project, although it too is expected to be completed this summer. Furthermore, because the new notice requirements in Section 51.332 only became effective on March 24, 2016,<sup>10</sup> it would have been impossible for ACS of Anchorage to provide the required 180 days' notice in any event. Because the summer construction season is so short, it is not feasible for AK-DOT to postpone the start of the project to later in the year after the 180-day Section 51.332 notice period elapses.

A waiver would also serve the public interest. These road reconstruction projects represent an opportunity to replace copper loop facilities with new fiber-fed DLCs, which will shorten the customer loops in the affected areas, potentially improving the speed and performance of the available telecommunications and broadband Internet access service in the area. ACS of Anchorage has worked with GCI to ensure that the transition occurs seamlessly and without service interruption for all end users in the affected areas.

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<sup>9</sup> *Petition of Qwest Corporation for Emergency Waiver of Section 51.333(b)(2) of the Commission's Rules*, WC Docket No. 09-171, Order, DA 09-2121, 24 FCC Rcd 12107 (Wir. Comp. Bur. 2009), at ¶ 5 (finding special circumstances justified waiver to permit removal of copper feeder lines on short notice to accommodate Arizona Department of Transportation plans to widen the I-8/16<sup>th</sup> Street bridge in Yuma, Arizona).

<sup>10</sup> *Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers*, Notice of Effective Date of Final Rule, 81 Fed. Reg. 15647 (Mar. 24, 2015).

Moreover, it is not possible to make a like-for-like replacement of the existing copper loop plant in any event, because there is not enough time before the deadline to order the necessary copper cable, and have it delivered to Anchorage and installed, and complete the transition. Current lead time to have the necessary copper cable delivered to Anchorage is approximately two months, meaning that there would not be sufficient time to obtain and deploy replacement copper facilities. The necessary fiber optic cable and DLC equipment, in contrast, are available on a more timely basis. ACS of Anchorage was not able to place orders for the necessary replacement cable earlier, because these are “reimbursable” projects, meaning that the AK-DOT will reimburse ACS of Anchorage for its costs incurred in relocating the affected facilities. Because ACS of Anchorage did not have this work in its own capital budget, and was not otherwise planning to undertake this work, it was not in a position to incur the cost of ordering the necessary cable and equipment, at its own risk that the project would be delayed.

**Conclusion**

For the foregoing reasons, ACS of Anchorage hereby requests that the Commission grant a waiver of Section 51.332 of its rules, 47 C.F.R. § 51.332, to the extent necessary to permit ACS of Anchorage to begin the migration process to transfer customers affected by the Johns/Klatt and Old Seward Projects to new, replacement fiber-fed DLC facilities, as described herein.

Respectfully submitted,



Digitally signed by  
Richard R. Cameron

Date: 2016.05.06  
13:45:38 -04'00'

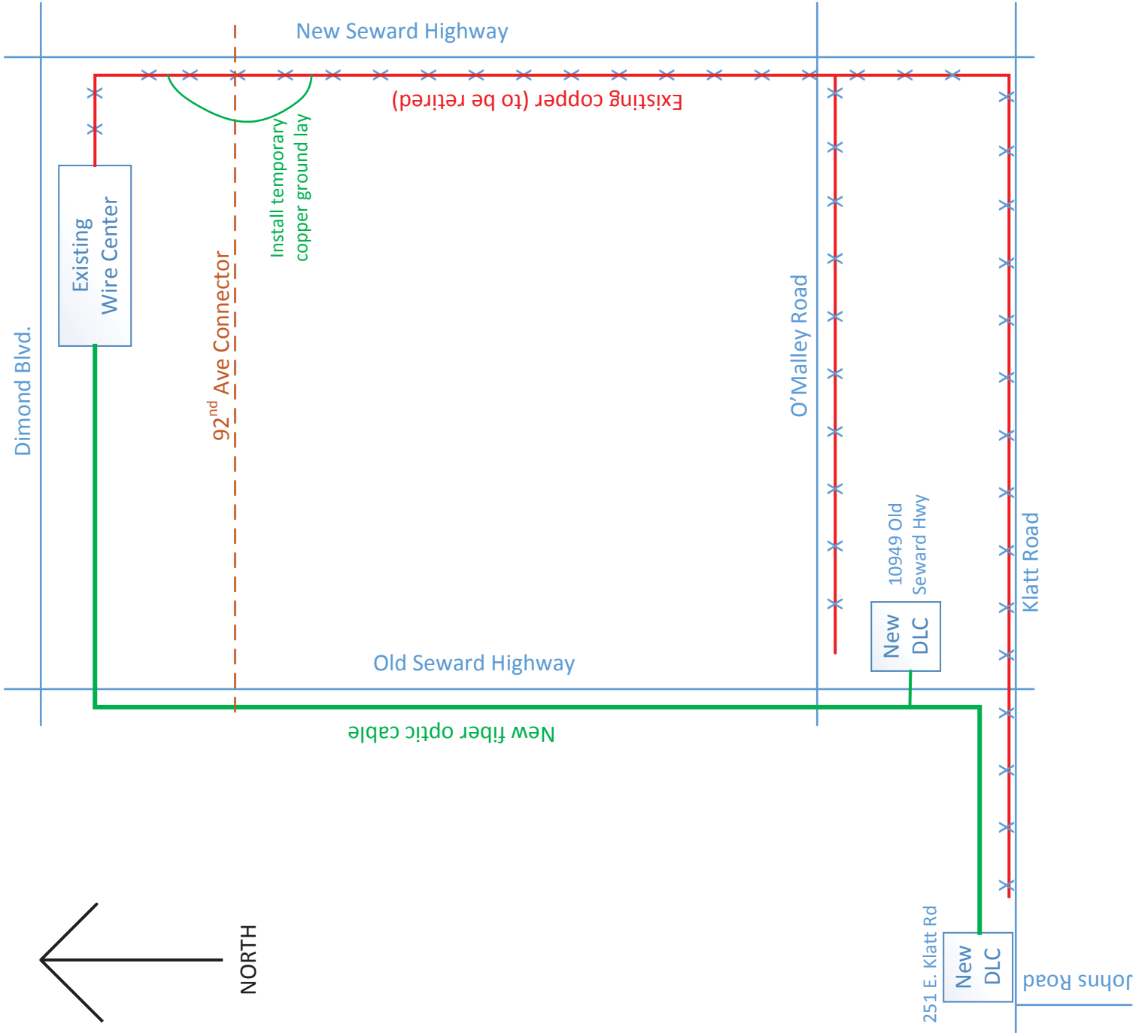
Leonard A. Steinberg  
General Counsel and Corporate Secretary  
Richard R. Cameron, Consultant  
ACS OF ANCHORAGE, LLC  
600 Telephone Avenue  
Anchorage, Alaska 99503  
907-297-3000

Cc: Michele Berlove  
Rodney McDonald



## **Exhibit A**

### **Diagram of Affected Facilities**



## **Exhibit B**

### **Network Change Notification**

Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Carmell Weathers  
Wireline Competition Bureau  
Competition Policy Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554



May 6, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RE: ACS of Anchorage, LLC Notice of Network Changes involving Copper  
Retirement pursuant to 47 C.F.R. § 51.332, Disclosure No. \_\_\_\_\_

Dear Ms. Dortch:

Pursuant to Section 51.332 of the Commission's rules, 47 C.F.R. § 51.332, ACS of Anchorage, LLC hereby submits the attached Public Notice of Retirement of Copper Feeder Under Section 51.332 of the Commission's rules.

This filing is being made through the FCC's Electronic Comment Filing System.

Concurrent with this filing, a copy of this information is being submitted to the Secretary of Defense, the Governor of the State of Alaska, the Regulatory Commission of Alaska, and Cook Inlet Region, Inc.

Please contact me at 907.297.3130 if you have any questions concerning this matter.

Sincerely,

Lisa Phillips  
Manager, Regulatory Affairs

Attachments

Copy to:  
United States Secretary of Defense  
Governor of the State of Alaska  
Regulatory Commission of Alaska  
Cook Inlet Region, Inc.



## Public Notice of Network Change under Rule 51.332

ACS of Anchorage, LLC's Internet address: <http://www.acsalaska.com>

May 6, 2016

RE: Network Change Notification

**Carrier:** ACS of Anchorage, LLC d/b/a Alaska Communications, 600 Telephone Ave.,  
Anchorage, Alaska 99503

### **Implementation Date:**

**10949 Old Seward Highway:** This network change has been scheduled for May 20, 2016 through approximately July 31, 2016.

**251 E. Klatt Road:** This network change has been scheduled for completion by approximately August 15, 2016.

### **Description of the Planned Network Change:**

Alaska Communications will be installing two fiber fed Digital Loop Carriers (DLC) at 10949 Old Seward Highway and at 251 E. Klatt Road and retire the existing buried copper physical feed currently in conflict with the Alaska Department of Transportation road construction along the New Seward Highway. The cutover of all services to these new DLCs will eliminate the need for the buried copper in conflict with road construction. The new DLCs will provide essential non-loaded POTS, DSL, and HDSL services into these areas.

### **Description of reasonably foreseeable impact(s) of the planned change(s):**

The retirement of the copper feeder will shorten the existing copper loops in the affected areas from 12,000-18,000 feet currently to no more than 5,400 feet. The change will require a change in provisioning from unbundled network element ("UNE") loop rate to a wholesale rate pursuant to the Global Interconnection and Resale Agreement between GCI and the ACS Local Exchange Companies.

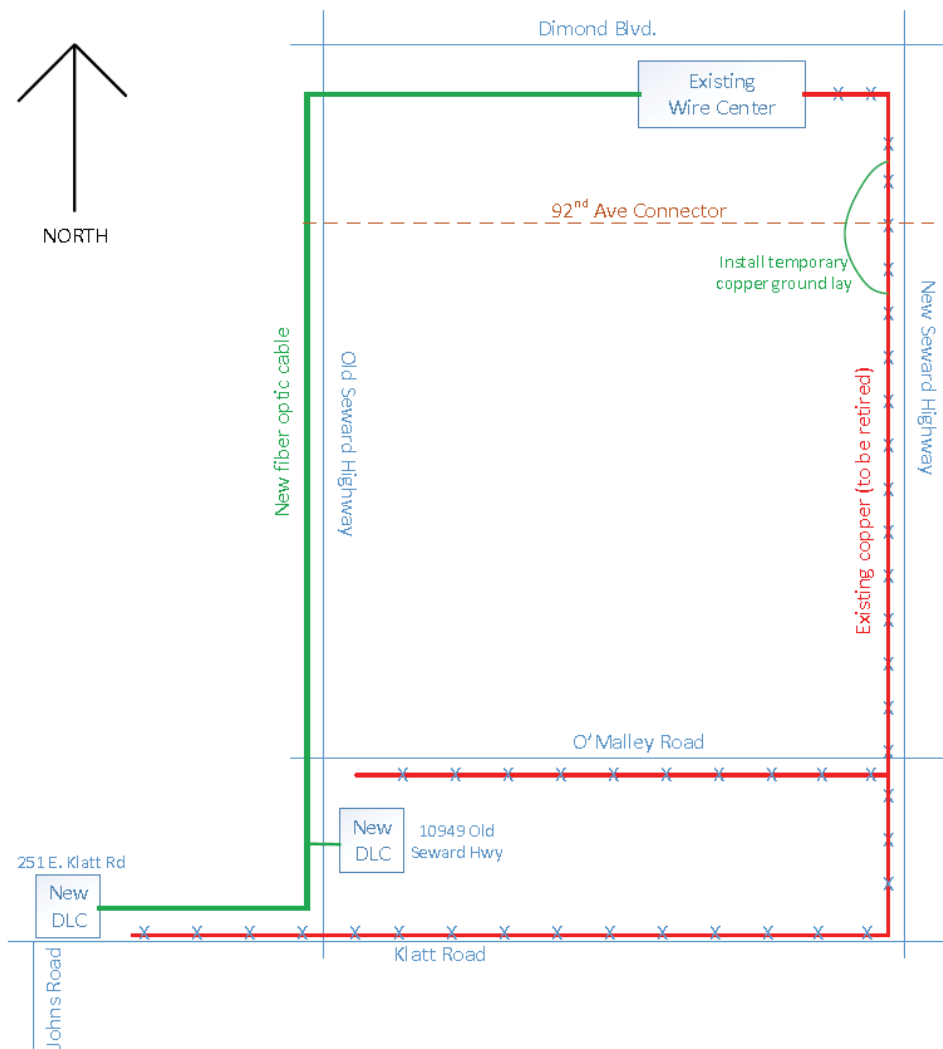
### **Planned Network Change(s) will occur at the following locations:**

10949 Old Seward Highway, Anchorage, Alaska 99515

251 E. Klatt Road, Anchorage, Alaska 99515

**Technical Contact** Ron Elledge, Senior Manager, Outside Plant Engineering  
907-564-1582

**Interconnection Contact** Kerri Lookabaugh, Service Assurance Manager  
907-565-6678



Not To Scale

## **Exhibit C**

### **Compliance Certification**





**Certification Statement of Compliance with 47 CFR 51.332(d)**  
**ACS of Anchorage, LLC**

ACS of Anchorage, LLC d/b/a Alaska Communications, will be installing two fiber fed Digital Loop Carriers (DLC) at 10949 Old Seward Highway and at 251 E. Klatt Road and retire the existing buried copper physical feed currently in conflict with the Alaska Department of Transportation road construction along the New Seward Highway. The cutover of all services to these new DLCs will eliminate the need for the buried copper in conflict with road construction. The new DLCs will provide essential non-loaded POTS, DSL, and HDSL services into these areas.

Concurrent with this certification filing Alaska Communications is filing the required network change notification with the Federal Communications Commission.

Concurrent with the filing of the network change notification and this certification, Alaska Communications has served a copy of its notice with General Communications, Inc. ("GCI").

Written notice was served by email upon:

Mary DeVore  
GCI Wholesale Markets  
[mdevore@gci.com](mailto:mdevore@gci.com)

Concurrent with the filing of the network change notification and this certification, Alaska Communications has served a copy of the notice upon:


The Regulatory Commission of Alaska  
The Governor of the State of Alaska  
Cook Inlet Region, Inc.  
Secretary of Defense, Special Assistant for Telecommunications

Notification requirements of 47 CFR 68.110(b) do not apply.

Alaska Communications has complied with the good faith communication requirements and will continue to do so until implementation of the copper retirement is complete.

The docket number and NCD number have not yet been assigned.

I, Laurie Butcher, Senior Vice President – Finance, for ACS of Anchorage, LLC, certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 5, 2016.

  
\_\_\_\_\_  
Laurie Butcher  
Senior Vice President – Finance

5/5/16  
\_\_\_\_\_  
Date